

Irby/Finance Committee Meeting

Monday, November 9, 2015

The Irby/Finance Committee met on November 9, 2015 at 10:25 AM at the Old U.S. Mint.

Members present: Robert A. Barnett; Madlyn B. Bagneris; Michael M. Davis; Rosemary Upshaw Ewing; Janet V. Haedicke, Ph.D.; Kevin Kelly; Lawrence N. Powell, Ph.D.; Philip Woollam; and Diane K. Zink

DCRT Staff present: Randy Davis, DCRT Deputy Secretary; and Julia George Moore, DCRT Counsel

LSM Staff: Yvette Cuccia; Wade Levy; Yvonne Mack; Mark Tullos; Celestine Washington; and Robert Wheat

Others present: John Boue, son of tenant at 535 St. Ann Street, 2nd floor; Alan Fisher, tenant at 503 St. Ann Street, 2nd floor; Edward Ready, Attorney for Alan Fisher; Marianne Lewis, Manager of Jackie's and Violet's clothing stores; and Louis Sahuc, tenant at 515 St. Ann Street, 2nd floor ; LSM Member Jeffrey Guice.

A quorum was present.

1. Call to Order

Mr. R. Barnett called the meeting to order at 10:25 AM.

2. Motion to Adopt the Agenda

Dr. Haedicke MOVED, seconded by Ms. Ewing, to accept the agenda. There was no public comment. **Unanimously approved.**

3. Approval of Minutes

The minutes from the October 12, 2015 meeting were distributed in advance for the Committee's review. Ms. Ewing MOVED, seconded by Ms. Bagneris, to approve the October 12, 2015 Irby/Finance Committee minutes. There was no public comment. **Unanimously approved.**

4. Financials

The financials as of 9/30/15 were distributed, as well as a balance sheet as of 10/31/15. Mr. R. Davis noted that the investment of Irby funds in CDs was discussed at the last meeting and is reflected on the balance sheet. Normally the statements will be presented with the same month end date but he wanted the balance sheet to reflect the investments in CDs that took place during the month of October.

One area that is a bit high on the financial statement is overtime costs due to short staffing, offset by savings in salary expenses for the same reason. Current projections reflect a \$50,000 surplus for Irby as of the end of the fiscal year. Mr. Woollam asked about prior year actual income/expenses and the

difference between residential and commercial rents. Mr. R. Davis said that in past fiscal years residential and commercial rents were not presented separately but would be going forward.

Ms. Ewing MOVED, seconded by Dr. Haedicke, to accept the financial statement and balance sheet. There was no public comment. **Unanimously approved.**

5. Old Business

a. Residential rent increase proposal

The study or work group, comprised of Robert Barnett, Kevin Kelly and Diane Zink, had met earlier this day to review, consider and make recommendations concerning the residential rent increase proposal. The group had agreed to generally recommend the LSM staff analysis spreadsheet supporting a residential rent increase, with some modifications, based on the 2015 Rent Study provided by the French Market Corporation and the members' working knowledge of rents in the French Quarter. The members recognized that no one was an expert in the field of appraisals, but based upon the data presented, that their collective recommendation was justified because the existing rents had not been increased in five (5) years and that there existed a waiting list of 150 potential tenants. The members discussed apartments that had been renovated by LSM and those renovated by existing or past tenants. The members also considered apartments with and without window air units as opposed to those with central air and heat systems; it was recommended that apartments with window units should receive a reduction in rent of \$50 per month until such time upgrades are made. That is, when a tenant moves out, central air and heat is expected to be installed and rent would then be increased a \$50 per month accordingly. Those apartments with combined window units and a central system would receive a \$25 per month reduction. Those apartments with total central systems would receive no reduction. The other modifications considered by the members included those apartments with open hallways. The units (with open hallways) should receive a discount of \$.10 per square foot for the hallway areas or a general monthly rental reduction of approximately \$8.00 per month. Rents will be increased when the hallways are closed in. Only four apartment units have open hallways.

In addition, the Work Group had suggested, and the Members discussed, that the balcony areas will be included in the rent at half the newly proposed rate per square foot. The measurements were discussed.

Mr. Kelly said these modifications should bring apartment rents in line with comparable real estate in the French Quarter. Ms. Washington related that she had worked closely with Ms. Mack to determine assessments, based also in part on the Upper Pontalba Rent Study dated January 15, 2015. The entire study had been previously discussed amongst staff including Mr. Tullos and Mr. Wheat.

Mr. M. Davis said he believed the Upper Pontalba study was based on the recent completed renovations at those apartments. He felt the comparables were not the same and that LSM should have its own rental study done. Mr. Barnett said that he had learned that this City's analysis was done on a square foot basis, and in addition, that the 2015 Upper Pontalba rent study did not take into account the recent renovations insofar as many of the City's renovations had not yet been completed; it was reportedly based on market rates in the French Quarter as a whole. The Members discussed that, in their personal working knowledge of the Quarter and rental rates, that the increase was in order and long overdue and warranted.

The Members recommended LSM staff's residential rent increase proposal, with Mr. Kelly's suggested modifications, together with the proposed credits. A lengthy discussion ensued again amongst the Members to re-review the discussions of the day, including more opportunities for public comment, continued discussions of the residential rent increase proposal of upwards of 50%, the Upper Pontalba rent study comparisons, relative improvements to the Upper and Lower Pontalba apartments, and consideration of procuring a new rent study.

Mr. Sahuc, a long-time tenant, said he thought Jackson Square was 'not a very atmospheric place to live any more' and that a rental increase was not needed. Mr. Boue's son also spoke and said his family has lived there for 30 years, and said that he has done many of his own upgrades. He felt that an increase was 'unfair' and 'not justified'.

Ms. Marianne Lewis said her mother lives at 810 Chartres 2nd Floor. She stated that she felt that the Lower Pontalba building 'should be for people who love the city' and 'want to live there, and not just corporate entities'. She felt that raising the rent would possibly deter true residential living and essentially create the situation where 'only the wealthy could afford apartments'.

Dr. Haedicke disagreed and said the Committee has a public fiduciary duty and responsibility and that the members are public trustees of Irby. Ms. Ewing agreed and also reminded the Committee that the LSM had a Rent Study done in 2010 and that another rental assessment was supposed to have been completed by 2013 and that it has now been five years and long overdue.

Mr. Barnett commented that it was his understanding that the LSM and City have been conducting essentially companion appraisals for many, many years; that is, the LSM and City have conducted alternating appraisals every several years and customarily exchanged studies; for example, the City provided LSM with its 2015 study, and LSM had provided the City with LSM's 2010 study, and so on. It was confirmed by staff that these exchanges of information had been on-going for a long time.

Ms. Ewing MOVED, seconded by Ms. Bagneris, to accept the LSM staff residential rent increase recommendations, which include ½ the per square foot rate for the balconies, while taking into account the Upper Pontalba Rent Study, subject to Mr. Kelly's modifications of a \$50 per month discount for apartments having window units, \$25 per month for apartments with combined window units/central systems, a \$.10 per square foot discount for apartments with open hallways and no more than \$8.00 per month. Six Committee members voted in favor of the MOTION with three dissenting votes. There was no further public comment. **The MOTION was approved.**

b. Commercial Rent Abatement proposal

At the October 12, 2015 meeting, the Irby/Finance Committee had requested that its Legal Counsel (Ms. Julia Moore) research whether the LSM could legally grant rent abatements to commercial tenants which were allegedly negatively impacted by the State's roof replacement/scaffolding project. Mr. Barnett had originally raised the issue of possible State Constitutional prohibitions.

The roof replacement project, which lasted from October 20, 2014-September 10, 2015, was carried out by the Office of Facility Planning and Control at a cost of \$686,362.00 in State funds (i.e., not Irby funds). Numerous commercial tenants had complained that scaffolding had obstructed

visibility and access to eight of the thirteen commercial tenants' businesses for varying periods during the four months of the project.

Ms. Moore had conducted and presented a thorough review of the state law and jurisprudence and advised that, under these particular facts, the proposed abatement – whether achieved by writing checks to tenants, issuing rent credits or reducing future rents payable – would be a gratuitous alienation of funds, which is prohibited by Louisiana Constitution Article 7, Section 14(A). Ms. Moore explained, in depth and by comparison, that the rent abatements granted post-Katrina served public purposes, and were therefore permissible.

Ms. Moore counseled that it is inadvisable for the LSM Board to solicit requests for an abatement that the LSM Board cannot grant any abatement or credit in this situation.

Mr. M. Davis expressed his regrets and accepted responsibility for giving the commercial tenants false hope. He stated that, in the future, such matters will be forwarded to Counsel for research and recommendations prior to making any assurances.

The Members thanked Ms. Moore for her thoroughness and advice.

No action was taken by the members to consider any abatement.

c. Update on 503 St. Ann Street, 2nd Floor

- (i) At the last meeting, the Committee, and subsequently the Board, had approved a motion which stated that Mr. Fisher was responsible for the nails in the bricks on the exterior wall and should pay the repair expenses. At the request of Irby, Mr. Levy had obtained an estimate for repairs to the exterior brickwork from AA Contracting Services in the amount of \$550. Once the repairs were completed, Ms. Washington had been instructed to send Mr. Fisher the final invoice for reimbursement.

Mr. Fisher's attorney, Mr. Edward A. Ready, said Mr. Fisher claims he did not put the nails in the exterior bricks and still maintains that nails were put there by someone other than Mr. Fisher or were never removed during the latest waterproofing work.

After further discussion, Ms. Ewing MOVED that Mr. Fisher be assessed the \$550 repair cost for the exterior brickwork repairs. Seconded by Dr. Haedicke. There was no further public comment. The motion **was approved with one dissenting vote by Mr. M. Davis.**

- (ii) At the October 12, 2015 meetings, the Irby/Finance Committee and LSM Board voted to end Mr. Fisher's residential tenancy at 503 St. Ann Street, 2nd Floor. The Irby/Finance Committee requested that Counsel (Julia Moore) be consulted by staff and then report back to Irby on the preferred process, i.e. to terminate the lease for breach (noting three recent lease violations) or to simply not renew the lease upon its expiration.

Ms. Moore reported that the residential lease at 503 St. Ann Street, 2nd Floor is a one-year lease, with a fixed term of February 1, 2015-January 31, 2016. Ms. Moore's opinion is that it is a cleaner process to allow the Lease to expire on January 31, 2016. A landlord is not required to

provide a reason, demonstrate cause, or go through any other steps to explain or justify allowing a lease to end upon expiration of its term.

However, the LSM Board, as a public agency, has a responsibility “to act in a manner that is reasonably related to the achievement of a legitimate governmental purpose.” Ms. Moore noted that Mr. Fisher’s several documented lease violations, which undermine and have undermined the LSM Board’s efforts to preserve and manage the building in accordance with the terms of Mr. Irby’s will and do, justify that the LSM’s decision not to renew the lease is “rationally related to the achievement of a legitimate governmental interest.”

Ms. Moore recommended that staff provide the tenants at least 60 days’ notice of the LSM Board’s intent not to renew the lease and to prepare for eviction proceedings should Mr. Fisher not vacate the premises.

Mr. Ready, representing Mr. Fisher, disagreed that Mr. Fisher had been anything other than a good tenant and that there were no grounds to terminate the lease between LSM and Mr. Fisher. He also objected and suggested that the alleged lease violations were not correct and that Mr. Fisher had not committed any of the alleged acts. Staff disagreed and Mr. Fisher’s file was present and available for inspection.

Ms. Ewing MOVED, seconded by Ms. Bagneris, that the Irby/Finance Committee report to the LSM Board that the 503 St. Ann, 2nd Floor Residential Lease with Mr. Alan B. Fisher and Mr. Marvin R. Fisher will terminate on January 31, 2016 and shall not be renewed. The staff was also directed to take any necessary steps and pay for any costs associated therewith from the Irby account, noting that the Tenant(s) are ultimately liable for any such costs. **Mr. Kelly recused himself from voting. There was no further public comment. The MOTION was approved with one dissenting vote by Mr. M. Davis.**

Mr. Fisher’s attorney, Mr. Ready, commented after the vote that Mr. Fisher had been there for 17 years and ‘loved living there’ and thinks it was ‘bad faith’ on the part of the Committee to not renew his lease.

d. Commercial bid process Step 2: 507 and 517 St. Ann Street

Mr. Barnett called upon Ms. Washington. She said the Committee needs to formally accept proposals received. She distributed a packet to each Committee member for review. Regarding 507 St. Ann Street, only one proposal was received. Ms. Washington said there were two proposals received for 517 St. Ann Street.

Mr. Davis MOVED, seconded by Mr. Woollam, to accept the bids received for both 507 St. Ann and 517 St. Ann Streets. There were no public comments. **Unanimously approved.**

Ms. Finley of FunRock’n spoke to the Committee. She said she was unaware that bids were being sent out and feels that she had not received any notice or communicated. She requested a delay on the bids received process and asked that LSM staff expand the bid process to include more options. Mr. Barnett asked staff whether notices were otherwise posted or published. Ms. Washington confirmed that public notice was made. Mr. Barnett then suggested that any delay would require that

the entire process would have to begin again, causing undue delay and costs. The Committee decided to accept the bids as received was appropriate.

e. Update on the 1850 House restoration/renovations

Mr. Tullos gave a PowerPoint presentation on the progress. All work is proceeding smoothly and should be completed by December 15, 2015. Hopefully, there will be no delays in getting everything cleaned, the walls painted and the carpet installed per the historical specifications.

6. New Business

Ms. Washington advised the Committee that commercial tenant 'Tabasco Country Store' was not able to pay its October rent in full by the required October 5th date and instead paid the rent with a late fee on October 27. This month, tenant again requested to partially pay its rent on November 15th and the remaining half of the rent by the end of the month. After some discussion, the Committee advised that the tenant must pay their November, 2015 rent in full in accordance with their lease terms.

Meeting adjourned at 12:33 PM.